

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NICK MAKREAS,
Plaintiff,

v.

FIRST NATIONAL BANK OF
NORTHERN CALIFORNIA, et al.,
Defendants.

Case No. [11-cv-02234-JST](#)

**ORDER RE USE OF DISCOVERY AT
TRIAL**

Re: Dkt. No. 177

The Court rules as follows on the parties' objections to discovery responses and deposition testimony, ECF No. 177, as set forth below:

I. Plaintiff's Objections To Discovery Responses Offered by Defendants

A. Deposition of Nick Makreas' dated September 18, 2012

<u>Page/Line</u>	<u>Ruling</u>
26:20-30:5	The relevance objection is SUSTAINED.
30:15-31:5	The objections are OVERRULED.
44:24-46:19	The objections are OVERRULED.
70:19-71:10	The relevance objection is SUSTAINED.
71:22-72:14	The relevance objection is SUSTAINED.
75:11-13	The relevance objection is SUSTAINED.
83:11-17	The relevance objection is SUSTAINED.
102:18-105:3	The relevance objection is SUSTAINED.

<u>Page/Line</u>	<u>Ruling</u>
139:25-140:3	The objection on grounds that the excerpt is incomplete is OVERRULED. The testimony that Plaintiff requests be added consists of inadmissible hearsay.
142:21-143:23	The objections are OVERRULED.
182:18-183:16	The objections are OVERRULED.
185:5-10	The relevance objection is SUSTAINED.
186:8-21	The relevance objection is SUSTAINED.
212:14-213:11	The objections are OVERRULED.
214:9-12	The objections are OVERRULED.
214:25-215:17	The objections are OVERRULED; however, the excerpt must include the testimony through and including 215:25.
216:11-220:15	The objection on the ground that the excerpt is incomplete is OVERRULED.
222:6-223:22	The parties did not attach the subject pages to their Joint Statement Regarding Use of Discovery Responses At Trial, so the Court cannot rule on the Plaintiff's objection.
224:4-13	The parties did not attach the subject pages to their Joint Statement Regarding Use of Discovery Responses At Trial, so the Court cannot rule on the Plaintiff's objection.
226:15-250:9	The objections are OVERRULED.

B. Deposition of Nick Makreas Dated September 29, 2010

<u>Page/Line</u>	<u>Ruling</u>
32:3-10	The objections are OVERRULED.
75:16-76:10	The objections are OVERRULED.
188:10-189:1	The relevance objection is SUSTAINED.

C. Plaintiff's Responses to FNBNC's Interrogatories

<u>Response #</u>	<u>Ruling</u>
1	The objections are OVERRULED.
2	The relevance objection is SUSTAINED.
3	The relevance objection is SUSTAINED.
4	The objections are OVERRULED.
5	The relevance objection is SUSTAINED.
6	The relevance objection is SUSTAINED.
9	The relevance objection is SUSTAINED.
12	The relevance objection is SUSTAINED.
16	The relevance objection is SUSTAINED.
19	The relevance objection is SUSTAINED.
20	The relevance objection is SUSTAINED.

II. Defendants' Objections To Discovery Responses Offered by Plaintiff

A. Deposition of The Person Most Knowledgeable of First National Bank of Northern California

<u>Page/Line</u>	<u>Ruling</u>
14:25-23:01	The objections are OVERRULED as to the testimony at 17:11-19:7; 19:22-20:4; and 21:9-23:01. The relevance objection is otherwise SUSTAINED.
23:02-24:10	The objections are OVERRULED.
25:23-26:05	The relevance objection is SUSTAINED.
33:19-33:20	These lines do not constitute a complete question and answer. Counsel will read 33:9-25.
34:15-34:16	The incompleteness objection is SUSTAINED. Counsel will read 34:1-16.
34:17-35:08	The objections are OVERRULED.

<u>Page/Line</u>	<u>Ruling</u>
40:13-40:22	The excerpt does not consist of a complete set of questions and answers. Assuming that Plaintiff intended to designate 40:16-22, the objections are OVERRULED.
85:6-87:4	The objections are OVERRULED. The portions attributable to Nick Makreas are not being offered for the truth of the matter asserted.
87:12-87:14	The objection is OVERRULED.
96:13-97:11	The incompleteness objection is SUSTAINED. Counsel will read through 97:20.
98:1-98:8	The objections are OVERRULED.
106:10-16	The relevance objection is SUSTAINED.
110:4-110:20	The objections are OVERRULED.
114:20-115:21	The objections are OVERRULED.
116:1-116:23	The relevance objection is SUSTAINED.
117:6-117:11	The objections are OVERRULED.
121:23-122:11	The objections are OVERRULED.
123:2-123:9	The objections are OVERRULED.
135:17-136:10	The objections are OVERRULED.
136:14-140:16	The hearsay objection to 140:13-16 is SUSTAINED. The remainder of the testimony is admissible.
147:5-150:12	The objections are OVERRULED.
154:1-154:24	The relevance objection is SUSTAINED.
163:21-23	The excerpt is incomplete and not comprehensible. The Court interposes and sustains an objection under Fed. R. Evid. 403.
164:14-166:1	The objections are OVERRULED.
187:21-188:12	The objections are OVERRULED.

B. Deposition of Kathy Castor

<u>Page/Line</u>	<u>Ruling</u>
7:9-9:4	The objections are OVERRULED.
10:6-10:22	The objections are OVERRULED.
13:22-14:6	The relevance objection is SUSTAINED.

C. Deposition of Randy Brugioni

<u>Page/Line</u>	<u>Ruling</u>
28:17-33:11	The relevance objection is SUSTAINED.
35:17-36:7	The relevance objection is SUSTAINED.
45:6-45:25	The objections are OVERRULED.
48:25-49:16	The objections are OVERRULED.
52:24-54:23	The objections are OVERRULED. Defendant's request to add two lines of testimony is denied; the portion that Defendant requests be added consists of a question without an answer.
58:5-58:13	The relevance objection is SUSTAINED.
61:25-64:11; 68:19-69:15	The objections are OVERRULED as to the following portions of the cited testimony: 61:25-62:6; 63:24-64:11; and 68:19-25. The relevance and Rule 403 objections are SUSTAINED as the remaining testimony.
74:3-74:8	The objections are OVERRULED.
78:16-78:19	The relevance and 403 objections are SUSTAINED.
91:24-98:25	94:9-96:6 is either cumulative or lacks foundation. 98:20-24 calls for speculation. 98:25 consists of a hashmark. The remainder of the testimony is admissible.
106:11-110:4	The Court assumes Plaintiff is not seeking to admit 108:12-109:19, which consists of an argument between counsel. The objections to the remaining testimony are OVERRULED.
110:5-112:8	The testimony must be expanded to include through line 112:15, but the objections are otherwise OVERRULED.
112:22-25	The relevance and 403 objections are SUSTAINED.

<u>Page/Line</u>	<u>Ruling</u>
113:5-115:18	The objections are OVERRULED.
132:13-15	The objections are OVERRULED.
132:16-133:4	The objection is SUSTAINED.
133:7-133:17	The objection that the questions pose an incomplete hypothetical is SUSTAINED.
138:5	The excerpt, which consists solely of the fragmentary use of the word “no,” is not admissible.
138:7-138:11	The vagueness and lack of foundations are SUSTAINED.
141:1-143:22	The relevance and 403 objections are SUSTAINED. The quiet title action is not relevant to these proceedings.
143:24-146:25	The relevance and 403 objections are SUSTAINED. The quiet title action is not relevant to these proceedings.
147:2-22	The relevance and 403 objections are SUSTAINED.
149:24-150:11	The objection is SUSTAINED. The testimony is not relevant and concerns an inadmissible offer to compromise.
155:5-156:6	The relevance and 403 objections are SUSTAINED.
171:19-172:11	The relevance and 403 objections are SUSTAINED.
177:17-179:12	The speculation objection is SUSTAINED.
179:13-181:15	The relevance and 403 objections are SUSTAINED.

D. Deposition of Kevin Valencia

The Court will resolve the Defendant’s objections if Kevin Valencia is unavailable, Fed. R. Evid. 804, which the parties agree is the only circumstance under which this deposition testimony could be admitted. See ECF No. 177 at 28.

E. Deposition of Deputy Steven Duvall

The Court will resolve the Defendant’s objections if Kevin Valencia is unavailable, Fed. R. Evid. 804, which the parties agree is the only circumstance under which this deposition testimony could be admitted. See ECF No. 177 at 35.

F. Deposition of Roger Copeland

The Court need not resolve the Defendant's objections, because Lieutenant Copeland testified in open court today.

G. Deposition of the Person Most Knowledgeable for TD Service Company (Crystal Espinoza)

<u>Page/Line</u>	<u>Ruling</u>
13:10-17	The objection is SUSTAINED. The cited excerpt appears to be a miscitation.
14:21-15:23	The relevance objection is SUSTAINED.
15:24-21:19	The relevance objection is SUSTAINED.
112:16-113:17	The objections are OVERRULED.

H. Deposition of Vanessa Varelas

<u>Page/Line</u>	<u>Ruling</u>
63:4-65:22	The objections are OVERRULED.
66:2-66:17	The objections are OVERRULED.
66:19-67:16	The objections are OVERRULED.

I. Deposition of Janina Hoak

<u>Page/Line</u>	<u>Ruling</u>
7:3-7:17	This appears to be the inadmissible testimony of counsel.
23:6-25	The relevance objection is SUSTAINED.
24:1-10	The relevance objection is SUSTAINED.
79:10-82:9	The relevance objection is SUSTAINED.

///

///

///

J. Deposition of Patrick DobieszPage/LineRuling

5:25-6:20

The relevance objection is SUSTAINED. The Court assumes, however, that the parties will stipulate that Patrick Dobiesz is the President of the Defendant.

K. FNBNC's Response to Plaintiff Nick Makreas' Amended First Set of Interrogatories

The Court has already resolved these objections by separate order. ECF No. 221.

L. Plaintiff Nick Makreas' Responses to FNBNC's Interrogatories

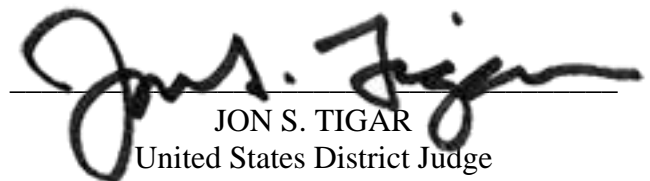
These interrogatory responses in their entirety are inadmissible hearsay when offered by the Plaintiff. That Defendant marked them as an exhibit does not change this result.

III. Additional Orders

With regard to each of the discovery responses addressed by this order, counsel will remove any objections or colloquy from any discovery response or deposition testimony that is read to the jury.

IT IS SO ORDERED.

Dated: December 9, 2013



JON S. TIGAR
United States District Judge